

Chapter 7.60 SALE OF CIGARETTES AND TOBACCO PRODUCTS

Section 7.60.010 Definitions.

As used in this chapter the following words shall have the following meanings:

"Cigarettes" means any roll for smoking, made wholly or in part of tobacco, irrespective of size or shape, and irrespective of tobacco being flavored, adulterated or mixed with any other ingredient if the wrapper is in greater part made of any material other than tobacco.

"Health officer" means the director of the Wichita-Sedgwick County department of community health and his or her authorized representative.

"Person" means any person, firm, partnership, association, corporation, company or organization of any kind.

"Package" means a container in which no more than twenty-five individual cigarettes are wrapped and sealed by the manufacturer of cigarettes prior to shipment to a wholesale dealer.

"Tobacco products" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; fine cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but shall not include cigarettes.

"Vending machine" means any coin, currency or token operated machine, contrivance or device, by means of which cigarettes or tobacco products are sold in their original package. (Ord. No. 42-423 § 1)

Section 7.60.020 Permit required--Nontransferable--Expiration date.

It is unlawful for any person to:

(a) Business Permit. Engage in the operation of a business selling, excluding selling by vending machine, cigarettes or tobacco products at one or more locations within the city, unless such person has procured from the Wichita-Sedgwick County department of community health a permit to engage in such business at each such location. Provided, however, that persons operating such a business on the effective date of the ordinance codified in this section shall make application for such permit within thirty days of said effective date and may continue to operate such business until the permit is obtained.

(b) Vending Machine Permit. Engage in the operation of a business of selling cigarettes or tobacco products from one or more vending machines unless such person has procured from the Wichita-Sedgwick County department of community health a permit for each such vending machine and one business permit as required by subsection (a) of this section that shall be deemed a business permit applicable to all locations at which that person sells cigarettes or tobacco products from a vending machine.

(c) A permit issued under this section is nonassignable and nontransferable. Each permit issued under this section shall expire on December 31st of the year in which issued. (Ord. No. 42-423 § 2)

Section 7.60.030 Permit fee.

(a) The fee for each business permit required by Section 7.60.020(a) of this chapter shall be one hundred fifty dollars per year.

(b) The fee for the vending machine permit required by Section 7.60.020(b) of this chapter shall be twelve dollars per year for each vending machine. (Ord. No. 42-423 § 3)

Section 7.60.040 Prohibited conduct.

It is unlawful for any person:

(a) To sell, give away, or provide in any manner, cigarettes or tobacco products to any person under the age of eighteen years;

(b) For any person under the age of eighteen years to purchase or possess cigarettes or tobacco products; provided, however, that this shall not prohibit such person from working as an employee at a place where cigarettes and tobacco products are sold;

(c) To sell or deliver cigarettes or tobacco products to any person who appears to be under the age of twenty-one years without having first verified the person's age by means of a photographic identification card such as a driver's license, state identification card, passport or military identification;

(d) To sell cigarettes in broken packages; or

(e) To sell cigarettes or tobacco products in a vending machine which does not clearly identify the operator of the machine, and which does not bear a conspicuous notice stating:

It is illegal for anyone under the age of eighteen years to purchase cigarettes or other tobacco products. K.S.A. 79-3321, 79-3390.

Provided, however, that in the event a machine is found to not have such a notice, the operator of the machine shall be notified and given seven days within which to place such notice on the machine before being charged with a violation of this requirement;

(f) To sell cigarettes or tobacco products in a vending machine in any establishment, or portion thereof, which is open to minors; provided, however, that this section shall not apply to:

(1) The installation and use by the proprietor, or his or her agent, or employees, of tobacco vending machines behind a counter, or in some place in such establishment, or portion thereof, to which access by minors is prohibited by law,

(2) The installation and use of a tobacco vending machine in a commercial building, or industrial plant, or portions thereof, where the public is not customarily admitted and where machines are intended for the sole use of the employees employed therein who are not minors, or

(3) A vending machine which has a lock-out device which is inoperable in the continuous standby mode, and which requires manual activation by the person supervising the operation of the machine each time a package of cigarettes is purchased. (Ord. No. 42-423 § 4)

Section 7.60.050 Suspension or revocation of permit.

A permit for the sale of cigarettes or tobacco products issued under this chapter may be suspended or revoked by the health officer:

- (a) For a period of up to seven days upon any conviction of the permit holder or any employee of the permit holder for any violation of this chapter;
- (b) For a period of up to fourteen days upon the second conviction of the permit holder or any employee of the permit holder for any violation of this chapter within six months;
- (c) For a period of up to six months upon the third conviction of the permit holder or any employee of the permit holder for any violation of this chapter within one year. (Ord. No. 42-423 § 5)

Section 7.60.060 Appeal from suspension or revocation.

An order of suspension or revocation entered by the health officer shall be subject to appeal to the governing body of the city. Such appeal shall be in writing setting forth with sufficient particularity the order or orders appealed from and the reasons why such order or orders should be reviewed. An aggrieved party shall have the right to be heard and to present evidence at the hearing set for such purpose. (Ord. No. 42-423 § 6)

Section 7.60.070 Enforcement.

Enforcement of the provisions of this chapter shall be primarily by the health officer and such employees of the Wichita-Sedgwick County department of community health as may be designated by the health officer. In addition, commissioned law enforcement officers are authorized to enforce this chapter. (Ord. No. 42-423 § 7)

Section 7.60.080 Penalty for violation of the provisions of the chapter.

Any person convicted of violating the provisions of this chapter shall be guilty of a misdemeanor and upon conviction shall be fined fifty-five dollars for a first offense; one hundred dollars for a second offense; and one hundred fifty dollars for a third or subsequent offense. Each day's violation shall be a separate offense. (Ord. No. 42-423 § 8)

Section 7.60.090 Severability.

Should any section or provision of this chapter for any reason be held void, unconstitutional or invalid, it shall not affect the validity of any other section or provision of this chapter which is in itself not void, unconstitutional or invalid. (Ord. No. 42-423 § 9)